

JURY TRIAL DEMANDED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

PAMELA HAMILTON AND
GUS TIMOTHY GEORGIAN

PLAINTIFFS

VS.

CIVIL ACTION NO. 2:19-cv-47-KS-MTP

BRANDON MCLEMORE,
MICHAEL HOFFER, AND
JEREMY DUNAWAY, INDIVIDUALLY
AND IN THEIR OFFICIAL CAPACITIES
AS HATTIESBURG, MISSISSIPPI,
POLICE OFFICERS

DEFENDANTS

COMPLAINT

THIS IS AN ACTION seeking monetary damages for the Defendants' violation of rights guaranteed under the United States Constitution by wrongfully, without just cause, willfully, and maliciously arresting, seizing, holding, and incarcerating Plaintiffs in the Hattiesburg, Mississippi, Police Department, and the Forrest County, Mississippi, Jail, being deliberately indifferent to the rights of the Plaintiffs, and depriving Plaintiffs of their freedom when all the while the Defendants were acting under color of law of the State of Mississippi.

JURISDICTION

1.

The jurisdiction of this action is secured pursuant to 28 U.S.C. §§ 1343 and 1331, for this cause of action arising under 42 U.S.C. § 1983.

VENUE

2.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) in that Plaintiffs reside and at all times material Defendants were employed in and resided in the Southern District of Mississippi, Eastern Division, and the events or omissions giving rise to these causes of action occurred in that same judicial district, judicial division, and State.

PARTIES

3.

Plaintiff Pamela Hamilton is, at all times material, a citizen of the United States and a resident of Lamar County, Mississippi.

4.

Plaintiff Gus Timothy Georgian is, at all times material, a citizen of the United States and a resident of Forrest County, Mississippi.

5.

Defendant Brandon McLemore was at all times material acting as a Police Officer of Hattiesburg, Forrest County, Mississippi.

6.

Defendant Michael Hoffer was at all times material acting as a Police Officer of Hattiesburg, Forrest County, Mississippi.

7.

Defendant Jeremy Dunaway was at all times material acting as a Police Officer of Hattiesburg, Forrest County, Mississippi.

8.

At all times material hereto, Defendants McLemore, Hoffer, and Dunaway were acting under color of law, usage, and custom of the State of Mississippi.

FACTS

9.

Plaintiff Gus Timothy Georgian and Ann (“Annie”) Georgian, now deceased, were brother and sister. Pam Hamilton is a cousin of Gus Timothy Georgian and was a cousin of Annie Georgian. When alive, Annie Georgian lived at 306 Mamie Street, Hattiesburg, Mississippi.

10.

In the evening of September 1, 2016, Plaintiff Gus Georgian was visiting his sister, Annie Georgian, at her house at 306 Mamie Street, Hattiesburg, Mississippi. Gus Georgian traveled to Burger King at about 8:00 or 9:00 PM and picked up some hamburgers and took those back to the house where he and Annie ate the burgers for supper. Gus took a nap in a recliner in Annie’s house. Annie also was napping.

11.

Gus woke up about midnight, left, and drove back to his house in Petal, Forrest County, Mississippi.

12.

The next night, Friday, September 2, 2016, at about 9:00 PM, Gus picked up food at Burger King and at Subway and tried to contact his sister Annie so she could eat with him.

Plaintiff Gus Georgian was not able to contact his sister. Rather than going to his sister's house, he then went to 310 Mabel Street in Hattiesburg, Mississippi, his parents' former home.

13.

Annie Georgian often walked her dog at night around 9:00 or 10:00 PM.

14.

Mary Meyers lives in the 1700 block of Mamie Street, in Hattiesburg. Mary, on September 5, 2016, noticed online that there had been a murder in her neighborhood. She noticed the description of the woman fit Annie perfectly. That night Mary called Annie who did not answer her telephone. Mary's husband went to the house and Annie did not come to the door. Mary then called Gus. Plaintiff Gus Georgian thereafter called the number of his sister several times, both her land line and her cell phone. Annie did not answer. Annie's land line was 601-582-1423, and her cell number was 601-520-3707.

15.

On September 6, 2016, Plaintiff Gus Georgian went looking for his sister during the daylight. He pulled into her driveway at about sunrise.

16.

Plaintiff Gus Georgian was able to enter Annie's house because he had a key. Annie was nowhere to be found. Gus also noticed in Annie's house that her usual set of keys and her dog were missing. Gus continued to call Annie's cell phone repeatedly and received no answer. Not finding Annie, at about 8:00 AM, Plaintiff Gus Georgian caused a missing person report to be made with the Hattiesburg Police Department.

17.

The police showed up at Annie's residence at about 9:30 or 10:00 AM in a marked police car. Defendant Hoffer later arrived in an unmarked Hattiesburg Police Department SUV. He was in plain clothes, but had his badge. Hoffer took a statement from Gus about the missing person. Plaintiff Gus Georgian told Hoffer about the scar on his sister's abdomen resulting from her cancer surgery. Defendant Hoffer then left for a short period of time and came back and told Plaintiff Gus Georgian his sister appeared to be the person deceased.

18.

Hoffer told Plaintiff Gus Georgian he wanted him to come to the Hattiesburg Police Station. Upon arrival, Gus was placed by himself in an interrogation room by Defendants McLemore, Hoffer, and Dunaway. Plaintiff Gus Georgian was arrested by being detained in the interrogation room and not allowed to leave. The three Defendants told him he could not leave. Plaintiff Georgian was under arrest and interrogated extensively. While so detained, Plaintiff Georgian gave the Defendants a DNA sample, fingernail clippings, and fingerprints, and was photographed.

19.

When Plaintiff Georgian was finally allowed to leave around 9:00 PM, his cousin, Plaintiff Pamela Hamilton, was waiting for him at the Police Department. Plaintiff Georgian and Plaintiff Hamilton then walked around Annie's neighborhood looking for her dog. Both then ate at Taco Bell and went home to sleep.

20.

The next morning, on Wednesday, September 7, 2016, the Defendants, or at least one of them, picked Plaintiff Gus Georgian up and took him in for further questioning. Again, Plaintiff Georgian was not allowed to leave by the three Defendants. He was effectively under arrest. The Defendants kept Plaintiff Georgian detained for at least eight hours, not allowing him to leave and without allowing him to eat anything.

21.

On September 7, 2016, Plaintiff Pamela Hamilton voluntarily drove to and appeared at the Hattiesburg Police Department. Plaintiff Hamilton was placed in an interview room, was read her Miranda Rights, and agreed to speak without a lawyer present. Plaintiff Hamilton provided a written consent for the police to search her cell phone. After searching the cell phone, the Defendant detectives told Plaintiff Pamela Hamilton that September 2 and 3 data had been deleted. Pam therefore wrote out a time line for the Defendants, showing where she was on September 2 and September 3. While detained, Plaintiff Hamilton gave the Defendants a DNA sample, fingernail clippings, and fingerprints, and was photographed.

22.

Plaintiff Pamela Hamilton's daughter, Paula Hamilton, tried to come into the interview room and told the Defendants that attorney Tom Fortner was at the Police Station to see Pam Hamilton. The Defendants pushed Paula out of the interview room and slammed the door. For several hours, Pamela Hamilton was under arrest because she was not allowed to leave. She was not allowed to see Tom Fortner, lawyer. When Paula Hamilton told the three Defendants that Tom Fortner, attorney, was there to speak to Pam, the police told her Paula that her mother, Pam,

said she did not want an attorney, was just trying to figure out who would want to kill Annie, she didn't need representation, and she was not free to go. Defendant Hoffer pulled Paula Hamilton out of the room when Paula tried to tell Plaintiff Pamela Hamilton that the attorney, Fortner, was there to see her.

23.

On September 13, 2016, Defendant Michael Hoffer executed under oath Underlying Facts and Circumstances supporting alleged probable cause to arrest Pamela Hamilton for "hindering a prosecution."

24.

The Underlying Facts and Circumstances is fabricated and misleading. Plaintiff Hamilton was not unwilling to provide an alibi for her whereabouts during the aforementioned period of time (September 2 and September 3, 2016). She gave the police a time line for those two days as best she could. She could not provide a more complete detailed time line because she relied on her telephone. The Defendants refused to allow her access to her telephone to compare it with the time line. She did put a time line together for them.

25.

An arrest warrant was issued for hindering prosecution for Plaintiff Hamilton on September 14, 2016.

26.

The Underlying Facts and Circumstances affidavit filed by Defendant Hoffer against Plaintiff Gus Timothy Georgian also is fabricated and misleading. The affidavit incorrectly

claims that Plaintiff Georgian stated that he had been at his house during the time period the detectives believed Ann Georgian was murdered but that he did not have an alibi to prove he was at home. Allegations that video surveillance recovered showing that Gus Georgian was in Hattiesburg at the approximate time Ann Georgian was murdered were explained by Plaintiff Gus Georgian when he said he had bought hamburgers at Burger King and a Subway sandwich, had driven down Hardy Street, and did go by Annie's house because she did not answer telephone calls. Gus thereafter drove by to check on property he owns and then went to his parents' former Hattiesburg home, 313 Mabel Street. The sentence that "there is sufficient motive for Gus Georgian to have committed the murder, given the significant monetary inheritance and property rights to be inherited upon the death of Ann Georgian," without anything else, did not establish any kind of probable cause to arrest Plaintiff Gus Georgian for murder. He was arrested for murder on September 13, 2016.

27.

Plaintiff Gus Georgian turned himself in to the Hattiesburg Police Department on September 13, 2016. He then had an initial appearance and posted a \$100,000.00 bond. He was released September 15, 2016. Plaintiff Georgian had spent three days in the Forrest County Jail.

28.

On September 14, 2016, Plaintiff Hamilton turned herself in to the Hattiesburg Police Department and was transported to the Forrest County Jail. Plaintiff Hamilton then had an initial appearance. Plaintiff Hamilton was returned to the Forrest County Jail where she bonded out after posting a \$10,000.00 bond. Plaintiff Hamilton spent at least six hours in jail.

29.

There was absolutely no probable cause to arrest Plaintiff Pamela Hamilton on September 7 and/or September 14, 2016.

30.

There was absolutely no probable cause to arrest Plaintiff Gus Timothy Georgian on September 6, 2016; September 7, 2016; September 8, 2016; and September 13, 2016.

31.

The Underlying Facts and Circumstances affidavit executed by Defendant Mike Hoffer against Plaintiff Hamilton on September 14, 2016 was based upon fabricated evidence.

32.

The Underlying Facts and Circumstances affidavit executed against Plaintiff Gus Timothy Georgian on September 13, 2016 by Sergeant Michael Hoffer was based upon fabricated evidence.

33.

The murder charge against Plaintiff Gus Timothy Georgian was “No Billed” by the Forrest County Grand Jury.

34.

The hindering prosecution charge filed against Plaintiff Pamela Hamilton was “No Billed” by the Forrest County Grand Jury.

35.

The Defendants' conduct as to both Plaintiffs evokes outrage or revulsion, the results being foreseeable, such that damages may be assessed for mental anguish and emotional distress for both Plaintiffs.

36.

The Defendants' actions in effecting the arrests of the Plaintiffs were so lacking in indicia of probable cause as to render official belief in the existence of probable cause unreasonable.

37.

There was an absence of probable cause for any of the arrests of the Plaintiffs.

38.

The Defendants acted with malice or with deliberate indifference to the rights of the Plaintiffs both in arresting the Plaintiffs and in filing formal charges and having arrest warrants issued for the Plaintiffs.

39.

As a direct and proximate result of the wrongful arrests, both Plaintiffs have undergone medical care and incurred significant medical expenses. Both Plaintiffs also have suffered significant damage to their reputations as a further direct and proximate result of the false arrests.

40.

The actions of the Defendants were not objectively reasonable.

41.

The Defendants did not have probable cause for the arrests of the Plaintiffs, but, to the contrary, did have requisite knowledge of reasonably trustworthy information sufficient to

warrant a person of reasonable caution in the belief an offense had not been committed by either of the Plaintiffs.

42.

As a further direct and proximate result of the false arrests, Plaintiffs have expended significant money in retaining attorneys to represent them.

43.

As a further direct and proximate result of her arrest and the publicity surrounding said arrest, Plaintiff Pamela Hamilton lost her employment.

COUNT I

44.

Said actions by the Defendants as to both Plaintiffs have deprived Plaintiffs of their rights under the United States Constitution, guaranteed by the First, Fourth, and Fourteenth Amendments thereto:

- a. Freedom from a deprivation of liberty without due process of law.
- b. Right not to be arrested and incarcerated without probable cause.
- c. Right not to be summarily punished and injured by false arrests.

45.

Defendants have subjected Plaintiffs to such deprivations of law either by malice or reckless disregard for the Plaintiffs' rights, justifying an award of punitive damages.

46.

As a direct and proximate result of the Defendants' acts, Plaintiffs have suffered pain, suffering, and severe mental anguish and emotional distress, been subjected to legal expenses, damage to their reputations, and impairment of family relationships.

47.

Both Plaintiffs are entitled to the return of all evidence collected against them, including, but not limited to, DNA records, fingernail clippings, fingerprints, photographs, and mug shots.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for the following relief of and from the Defendants, jointly and severally:

1. A judgment for medical expenses reasonably incurred by each Plaintiff.
2. A judgment for attorneys' fees reasonably incurred by each Plaintiff caused by their arrests.
3. The return of all evidence collected against the Plaintiffs, including, but not limited to, DNA, fingernail clippings, fingerprints, photographs, and mug shots taken while in custody.
4. Back pay suffered by Plaintiff Hamilton because of termination from her employment.
5. As to Plaintiff Hamilton, an award of compensatory damages of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for personal injury, pain and suffering, mental anguish, emotional distress, and damage to reputation.
6. As to Plaintiff Georgian, an award of compensatory damages of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for personal injury, pain and suffering, mental anguish, emotional distress, and damage to reputation.

7. Punitive damages in the amount of One Million Dollars (\$1,000,000.00) for each Plaintiff.

8. Reasonable costs and reasonable attorneys' fees, along with prejudgment and post-judgment interest.

Respectfully submitted, the 2nd day of April, 2019.

/s/ Dennis L. Horn

Dennis L. Horn, Attorney for Plaintiffs,
Gus Timothy Georgian and Pamela Hamilton

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